

## **Restrictions on Funding for Candidates’<sup>1</sup> “Inauguration Events”**

The funding of “inauguration events” for elected candidates raises several issues under the Political Reform Act<sup>2</sup> (the “Act”). Below are answers to frequently asked questions on “inauguration events.” The purpose of this fact sheet is to provide general guidance and, therefore, Commission advice on these issues may vary according to the specific facts of a particular situation.

### **What is an “inauguration event” for purposes of this discussion?**

For purposes of this discussion an “inauguration event” is a privately funded event conducted in conjunction with the formal inauguration or swearing-in of a candidate elected to public office.

Generally, when the governmental agency to which a candidate is elected pays for events in connection with that candidate’s formal inauguration or swearing-in, those payments are not regulated by the Act, and those types of payments are not addressed in this discussion.<sup>3</sup>

### **May a candidate elected to public office use his or her campaign funds to pay for the candidate’s own inauguration event?**

Yes. Section 89512 requires a candidate’s use of campaign funds to relate reasonably to a political, legislative, or governmental purpose. However, an expenditure that confers a substantial personal benefit must directly relate to a political, legislative, or governmental purpose. Nonetheless, Section 89513(f)(3) specifically states that an “election victory celebration or similar campaign event...[is] considered to be directly related to a political, legislative, or governmental purpose.”

However, if campaign funds are used, they must be expended from either a campaign account established for election to that office (Section 85201 and Regulation 18525) or from an officeholder account authorized under the Act or by local law (for elected state officers<sup>4</sup> see Section 85316 and Regulation 18531.62).

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<sup>1</sup> An individual who is a “candidate” retains that status until he or she terminates that status by filing the appropriate campaign reports under Government Code Section 84214. Therefore, for purposes of this discussion a “candidate” includes an individual who has been newly elected to office but does not yet hold that office as well as an individual who has been elected to and taken office.

<sup>2</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 19997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>3</sup> We do not address the issue of donations to governmental agencies in this discussion, but if private funds are solicited and donated to the agency to pay for the agency’s costs, candidates and officials attending the event may be receiving a gift (see Regulation 18944.2) and, if they solicit the donations to the agency, may have to file a “behested payment” report (see Section 82015(b)(2)(B).)

**May a donor make a payment directly to a candidate elected to public office to pay for all or part of the candidate's inauguration event?**

Yes. However, a payment for an inauguration event made directly to a candidate elected to public office is a contribution to the candidate. Accordingly, the payment must be reported as a contribution and is subject to any applicable contribution limit. In addition, any contribution made to a candidate for an inauguration event must be deposited into the appropriate campaign bank account.

If the candidate was elected to state office, the candidate is prohibited from taking contributions into his or her campaign account for the recent election to pay for an inauguration event. (Section 85316 and Regulation 18531.61.) The candidate may only accept contributions for this purpose into his or her officeholder account established for the new office (Section 85316 and Regulation 18531.62) or into a campaign account established for re-election to the new office. (Regulation 18225.) Contributions to both of these accounts are subject to contribution limits. (See Sections 85316 (officeholder accounts) and 85301-85303 (campaign accounts).)

**May a committee not controlled by the candidate, such as a PAC or political party, pay or ask someone else to pay for an inauguration event as part of a fundraiser<sup>5</sup> for the committee?**

Yes, and since the event is part of a fundraiser for the committee, any candidate or public official who attends the event does not receive a gift for his or her admission to the event, or for any food, beverages or other personal benefits provided to individuals who attend the event, so long as one ticket, pass or other admission to the event is provided to the candidate by the committee itself. Additional tickets provided to the candidate, or over which the candidate exercises direction and control, are gifts to the candidate and, if reportable on the candidate's Statement of Economic Interests, will be subject to the Act's current gift limit of \$420. (Regulation 18946.4(c).)

In addition, if the candidate solicits contributions to the committee in connection with the fundraiser, such a contribution is not a contribution to the candidate (Regulation 18215(d)) nor is it a "behested payment" reportable by the candidate under Section 82015(b)(2)(B)(iii).

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<sup>4</sup> Elected state officers include individuals who hold, are elected to, or are appointed to fill a vacancy in, the following offices: Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees Retirement System, and member of the Board of Equalization. Pursuant to Senate Bill 1007 (Stats. 2010, Ch. 633), effective January 1, 2011, members elected to the Teachers' Retirement Board will also be elected state officers. (See Sections 82020, 82021 and 82024.)

<sup>5</sup> The event must be a true fundraiser for the committee and not merely a "pass through" where the funds are merely being donated to the committee to pay for the costs of the inauguration event.

**Assuming the payment is not a contribution to a candidate or committee as discussed above, may a donor make a payment directly to a vendor or to some other person to pay for all or part of a candidate's inauguration event?**

Yes, but depending on the circumstances surrounding the payment (described below), the candidate may have to report the payment as a "behested payment" under Section 82015(b)(2)(B)(iii), and the pro rata cost of the inaugural event plus the value of any specific item presented to the candidate at the event as a result of the payment may have to be reported as a gift on the candidate's Statement of Economic Interests and may be subject to the Act's current \$420 gift limit. Also, in some cases, the attendance of the candidate's spouse or children at the event may be considered a gift to the candidate.

**1. "Behested Payments."** A payment is made at the "behest" of a candidate whenever it is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" a candidate. (Regulation 18225.7.) A payment to a vendor or third party that is not a contribution, is made principally for a legislative, governmental or charitable purpose, and that is at the "behest" of an elected official is a reportable behested payment and must be reported by the candidate to his or her agency within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. (Section 82015.)<sup>6</sup>

Since an inauguration event is related to the governmental purpose of installing an elected official in office, when a candidate solicits a donation to pay a vendor or a third party for the purpose of paying expenses for his or her inauguration event and the payment is not a contribution to a committee, the candidate must file a behested payment report if the above criteria are met.

In addition, if an entity coordinates with the candidate or his or her agents on the details of the inauguration event, then the event is "at the behest" of the candidate and the entity's expenditures on the event must be reported as a behested payment by the candidate if they meet the criteria above.

To comply with behested payment reporting provisions, the candidate must complete FPPC Form 803.

Even if the candidate is required to file a behested payment report in connection with the event, he or she also may be receiving a gift in connection with the event, as described under 2 below.

## **2. Gifts.**

General Rule: If the inaugurated candidate attends an inauguration event paid for by a private party (but not paid by a committee as part of a campaign fundraiser for the committee as

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<sup>6</sup> Since an "elected officer" includes someone who has been elected to office but has not yet taken office, the behested payment reporting in Section 82015(b)(2)(B) applies to recently elected candidates who have not yet taken office. (See Section 82020 and Footnote 4.)

described above), the candidate will receive a reportable gift<sup>7</sup> and the gift is subject to the Act's gift limit, which is currently \$420 per source for each calendar year (Section 89503 and Regulation 18940.2). In addition, elected state officers and candidates for those offices are prohibited from receiving gifts from, or arranged by, a registered state lobbyist or lobbying firm in excess of \$10 in a calendar month. (Section 86203 and Regulation 18624.) The value of the gift to the candidate would be the pro rata cost of the inaugural event (i.e., total cost of the event divided by the number of persons who "RSVP" their attendance) plus the value of any specific item presented to the candidate at the event. (Regulation 18946.2.) See "Source of Gift" discussion below to determine who the source of a gift is.

Since the event is not part of the candidate's agency's formal inaugural or swearing-in ceremonies, the "ceremonial role" exception in Regulation 18942(a)(13) does not apply. Previous advice letters indicating otherwise are superseded to the extent they are inconsistent with this conclusion. (See *Bell* Advice Letter, No. A-94-376 and *Sutton* Advice Letter, No. A-05-256.)

**Ticket/Invitation to the Candidate's Spouse or Children (Regulation 18944):**

**Elected state officers:** When the inaugurated candidate is an elected state officer, and the source of the gift (see "Source of Gift" discussion below) is a lobbyist, lobbying firm, lobbyist employer or other person who is required to file lobbying reports under the Act, a ticket or invitation to the inaugural event offered to the spouse or child of the candidate is counted as a gift to the candidate and aggregated with all other gifts to that candidate from the same source. The only exception to this rule is if the candidate's family member has an independent working or social relationship with the source of the gift, in which case the ticket or invitation provided to the family member is not a gift to the candidate. As mentioned above, elected state officers and candidates for those offices are prohibited from receiving gifts from, or arranged by, a registered state lobbyist or lobbying firm in excess of \$10 in a calendar month.

**Elected local officials:** When the inaugurated candidate is an elected local official and the source of the gift (see "Source of Gift" discussion below) is a person who is or has been directly involved (see Regulation 18704.1) in a governmental decision before the candidate within the past 12 months, a ticket or invitation to the inaugural event offered to the spouse or child of the candidate is counted as a gift to the candidate and aggregated with all other gifts to that candidate from the same source. The only exception to this rule is if the candidate's family member has an independent working or social relationship with the source of the gift, in which case the ticket or invitation provided to the family member is not a gift to the candidate.

**All elected officials:** Assuming the source of the ticket/invitation to the family member is not a person identified immediately above, and the candidate neither exercises direction and control over who will receive the ticket/invitation nor solicits the ticket/invitation for the family member, a ticket/invitation offered specifically the candidate's family member is not a gift to the candidate.

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<sup>7</sup> This presumes that the source of the gift is one that the candidate is required to report on his or her Statement of Economic Interests and the aggregated gifts from the source during the applicable reporting period was \$50 or more. (See Sections 87207 and 87302.)

Value of the Family Member's Gift: If the ticket/invitation to the candidate's family member is a gift to the candidate, it would be valued as follows: If tickets are sold to the event, the gift value is the face value of the ticket. (Regulation 18946.1(a).) If tickets are not sold to the event and the free admission was provided by invitation, the value is the pro rata share of the cost of the event ((i.e., total cost of the event divided by the number of persons who "RSVP" their attendance; Regulation 18946.1(b) and (c)).

#### Source of Gift (Regulation 18945):

Regulation 18945, amended effective June 10, 2010, sets forth very specific rules on who is the source of a gift under Act when donations are made through an entity. Determining the source of a gift is important not only for reporting purposes on a candidate's Statement of Economic Interests, but also to avert the donor making a gift to the candidate that exceeds the Act's \$420 gift limit.

Generally, the source of a gift is anyone who makes the gift and who is not acting as an intermediary for another. (Regulation 18945(a).) However, if a donor makes a payment to a third party and the payment is used directly or indirectly by the third party to make a gift to an official under any of the following conditions, the donor is the source of the gift (Regulation 18945(b)(1)):

(A) The donor directs and controls the payment at the time it is used by the third party to make a gift to the official.

(B) The donor and third party have agreed that the payment will be used by the third party to make a gift to the official.

(C) The donor identifies the official to the third party as the intended beneficiary of the payment prior to the third party making the payment to the official.

(D) The third party identifies the official to the donor as the intended beneficiary of the payment prior to the donor making the payment to the third party.

(E) The donor knows or has reason to know that the sole or primary purpose of the payment is to make gifts to officials.

(F) The official or the official's agent solicits the payment from the donor to the third party for the purpose of making a gift to the official.

Therefore, under these provisions, if a candidate asks for donations to an organization, or if the organization is receiving donations, for the purpose of paying for all or part of the candidate's inauguration event, the donor will be a source of a gift to that candidate for the donor's pro rata portion of the total value of the gift provided to the candidate.

Likewise, if the candidate solicits the donation, the donor will be a source of a gift to that candidate for the donor's pro rata portion of the total value of the gift provided to the candidate's spouse and children. However, if the candidate does not solicit the donation to the organization, the donor will not be a source of a gift to the candidate for the pro rata value of the tickets or invitations

provided to the candidate's spouse or children. In that case, the organization itself will be the source of the gift, and the gift of the tickets or invitations provided by the organization to the family members will only be attributed to the candidate if the candidate solicits the tickets or invitations to the family members.